MASTER AND SERVANT—INJURIES TO SERVANT—SCOPE OF EMPLOYMENT UNDER WORKMEN'S COMPENSATION ACTS.—A cigar packer, who frequently delivered cigars to customers if so requested by his employer, on passing the factory after the close of his working hours, saw a light and went upstairs. The employer then requested him to deliver two boxes of cigars. On the way downstairs he fell and was killed. An action was brought under the Workmen's Compensation Acts to recover for death within the scope of employment. *Held*, the deceased was acting within the scope of his employment. *Grieb* v. *Hammerle* (N. Y.), 118 N. E. 805.

Courts are inclined to construe the term "scope of employment" as favorably toward the employee as is consistent with the circumstances of the particular case. Thus it seems that the scope of duty within which a servant is entitled to protection is to be defined by what he was employed to perform, and what, with the knowledge and approval of his employer, he did perform, rather than by the verbal designation of his position. *Rummell* v. *Dillworth*, 111 Pa. 343, 2 Atl. 355. The general test seems to be the power of the employer to direct and command with regard to the act in question. *Re Noyer* v. *Cavanaugh* (N. Y.), 116 N. E. 992. But this rule is not strictly applied.

Where an employee deviated temporarily from his assigned duties to perform an act for his employer necessary to be done by someone, even though not so ordered by his master, he was acting within the scope of his employment. *Hartz* v. *Hartford Faience Co.* (Conn.), 97 Atl. 1020. Likewise where the work is different from, but necessary or incidental to that for which the plaintiff was employed. *Louisville & N. R. Co.* v. *Mahoney's Admx.*, 153 Ky. 761, 56 S. W. 388. Furthermore, an employee injured while attempting to rescue a fellow employee is acting within the scope of his employment. *Walters* v. *Taylor*, 218 N. Y. 248, 112 N. E. 727. Nor is the situation altered by the fact that the risk encountered is one shared alike by the general public as well as those in the master's employment. *Dennis* v. *White* [1917] A. C. 479; nor where the employee is engaged in an act preparatory to something entirely outside of the scope of his employment, if he was within the bounds thereof at the time of his injury. *Pigeon* v. *Employers' Liability Assurance Corp.*, 216 Mass. 51, 102 N. E. 932.

The instant case seems to be the first on record where the term "scope of employment" is applied to an act performed entirely outside of the employee's working hours. *Larke* v. *John Hancock Ins. Co.* (Conn.), 97 Atl. 320, cited by the court as sustaining this proposition, does not seem to uphold the point, since in that case the employee was subject to no definite hours whatever. The holding, however, is in conformity with the liberal interpretation of the term "scope of employment" as applied by the courts in favor of the injured party. But a line should be drawn somewhere. Great stress was laid by the court on the element of loyalty and helpfulness of the deceased as a reason for recovery. But sentiment of this sort should not be a controlling factor. The deceased was under no duty whatever to visit the factory at the time, and his services were obviously gratuitous, and hence recovery should have been denied.